

EXHIBIT A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

AUTOMOBILIA II, LLC, a Florida limited
liability company,

Plaintiff,

v.

GETTY IMAGES INC., a Delaware
corporation, GETTY IMAGES (US), INC.,
a New York corporation; PIXELS.COM
LLC, an Illinois limited liability
corporation; and DOES 1-10, inclusive,

Defendants.

Case No. 2:22-cv-2560

**FIRST AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Automobilia II, LLC (“Automobilia II”), by and through its attorneys of
2 record, complains against Defendant Getty Images, Inc. (“Getty Images”), Defendant Getty
3 Images (US), Inc., (“Getty US”), Defendant Pixels.com, LLC (“Pixels”), and DOES 1
4 through 10 (collectively “Defendants”) as follows:

5 **JURISDICTION AND VENUE**

6 1. This is a civil action against Defendants for their acts of copyright
7 infringement in violation of the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* This
8 Court has subject matter jurisdiction over the copyright infringement under 28 U.S.C.
9 § 1331, 28 U.S.C. § 1332, 17 U.S.C. § 501(a), and 28 U.S.C. § 1338(a).

10 2. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and
11 28 U.S.C. § 1400(a) in that the claim arises in this judicial district, the Defendants transact
12 business in this judicial district, and the injury suffered by Plaintiff took place in this
13 judicial district. Defendants are subject to the general and specific personal jurisdiction of
14 this Court because of their contacts with the State of California.

15 **PARTIES**

16 3. Plaintiff Automobilia II, LLC is a Florida limited liability company with its
17 principal place of business in Sarasota, Florida.

18 4. Plaintiff is informed and believes and, upon such, alleges that Defendant Getty
19 Images, Inc., is a Delaware corporation with its principal place of business in Seattle,
20 Washington.

21 5. Plaintiff is informed and believes and, upon such, alleges that Defendant Getty
22 (US), Inc., is a New York corporation with its principal place of business in Seattle,
23 Washington.

24 6. Plaintiff is informed and believes and, upon such, alleges that Defendant
25 Pixels.com, LLC, is an Illinois limited liability company, with its principal place of
26 business in Santa Monica, California.

27 7. DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues
28 said Defendants by such fictitious names. Prior to filing suit, Plaintiff asked that Getty US

1 and Pixels enter into a tolling agreement while the parties discussed settlement. The tolling
2 agreement contained a representation that Getty US owned, operated, and controlled
3 Photos.com and that Pixels owned, operated, and controlled Pixels.com. Defendants were
4 unwilling to sign the agreement with this representation and were unable to identify who
5 else might be responsible for the infringement of Automobilia's works. As such, these
6 other participants who are responsible for the infringement are being sued as DOE
7 defendants. Plaintiff will ask leave of Court to amend this Complaint and insert the true
8 names and capacities of said Defendants when the same have been ascertained. Plaintiff is
9 informed and believes and, upon such, alleges that each of the Defendants designated
10 herein as a "DOE" is legally responsible in some manner for the events and happenings
11 herein alleged, and that Plaintiff's damages as alleged herein were proximately caused by
12 such Defendants.

13 **STATEMENT OF FACTS**

14 ***The Photos Forming the Subject Matter of This Dispute***

15 8. Lucinda Lewis is a photographer who captures a nostalgic look of America
16 through classic automobiles while posed with neon-lit diners, drive-in movie theaters, and
17 Route 66 landmarks among many others. Lewis's photographs have been published in
18 books, calendars, and posters which have been sought after by car enthusiasts and history
19 buffs, and they have been licensed for many thousands of dollars. Lewis's images are
20 professional-grade and uniquely captured. Each has been transferred to Plaintiff
21 Automobilia II. Automobilia II also owns the copyrights of certain car photos authored by
22 others, the interest to which has been assigned to Automobilia II.

23 9. The images that form the subject matter of this dispute are referred to herein as
24 the "Photos."

25 10. Automobilia II, or its predecessor in interest which has assigned its interest to
26 Automobilia II, has timely registered the Photos with the United States Copyright Office.
27 Their respective registration numbers are attached hereinto as Exhibit A.

28 11. Automobilia II owns all rights, title, and interests (including the copyrights

thereto) to the Photos.

The Defendants and the Marketplace

12. Defendant Getty Images is a visual media company and is a supplier of photography, video, and music, with an archive of over 200 million assets. It licenses its assets to creative professionals, seeking content for advertising and graphic design, the media, for print and online publishing, and corporate professions for in-house design and marketing. Getty Images has distribution offices around the world and capitalizes on the Internet for distribution of its content. In 2021, Getty Images was valued at \$4.8 billion.

13. On information and belief, Getty US is a subsidiary of Getty Images. As described herein, on information and belief, Getty and Getty US have partnered with Pixels with respect to the infringing websites at issue in this lawsuit, Photos.com, Pixels.com, and FineArtAmerica.com. On information and belief, Getty Images supplied its archive to Photos.com, Pixels.com, and FineArtAmerica.com, including the Photos, notwithstanding it did not have the right to do so, at least with respect to the Photos at issue in this lawsuit.

Photos.com

14. According to the Photos.com website, “Photos.com by Getty Images offers a curated selection of ready-to-hang photographs with a range of framing options.” Customers can pick a photograph that is displayed on Photos.com, and order, on information and belief, Pixels (or a DOE defendant) to print it on canvas, metal, acrylic, or wood and buy a frame to go with it. The Photos were reproduced, publicly displayed, and distributed on photos.com without Automobilia II’s consent, all so that users could cause Defendants and their agents to make unauthorized derivative works of them.

15. On information and belief, Getty US owns and, at least, in part, controls, the website www.photos.com. Among other things, it is listed as the registrant of the domain name photos.com. Its logo states “Photos.com by Getty Images,” a trademark held by Getty US.

16. On information and belief, Pixels has partnered with Getty US to operate and, in part, control the website Photos.com. While Photos.com’s Terms of Use do not identify

1 the legal entity that is bound by those terms, it does provide its copyright agent's and
2 trademark agent's information, who both have the same business address as Pixels.com,
3 2202 Main Street, Santa Monica, California. Moreover, the Privacy Policy for Photos.com
4 explains how Pixels, not Getty, collects information from users.

5 17. Without Automobilia II's consent or permission, Defendants, through
6 Photos.com distributed, reproduced, publicly displayed, and offered for sale derivative
7 works which are shown in Exhibit B.

8 **Pixels.com and FineArtAmerica.com**

9 18. On information and belief, Pixels owns, operates, and controls Pixels.com and
10 FineArtAmerica.com.

11 19. Like Photos.com, Pixels.com and FineArtAmerica.com offer their customers a
12 way to pick a photograph displayed on the respective website, and order, on information
13 and belief, Pixels (or a DOE defendant) to create a framed canvas print of the image,
14 among other options, as well as the option to create apparel, stationery, home goods, beach
15 gear, and much more. Pixels.com features a "Getty Images Shop" featuring images from
16 Getty's archive and/or Getty US's website Photos.com.

17 20. On information and belief, Defendants' reproduction, distribution, and public
18 display of Automobilia II's Photos, and derivatives thereof, were mirrored on
19 FineArtAmerica.com, which has the same content as Pixels.com. Indeed, both websites
20 share the same layout, copy, and selection, order, and arrangement of the works distributed
21 thereon.

22 21. Without Automobilia II's consent or permission, Defendants, through
23 Pixels.com and FineArtAmerica.com distributed, reproduced, publicly displayed, and
24 offered for sale derivative works. *See e.g.* Exhibit C.

25 22. Defendants have, on information and belief, violated federal law by willfully
26 infringing Automobilia II's copyrights on Photos.com, Pixels.com, and
27 FineArtAmerica.com and through their unauthorized distribution of derivative works
28 without permission, consent, or license. *See Exhibits B & C.*

FIRST CLAIM FOR RELIEF
(Copyright Infringement, 17 U.S.C. § 501
Against All Defendants)

23. Plaintiff Automobilia II incorporates here by reference the allegations in paragraphs 1 through 22 above.

24. Automobilia II is the rightsholder to the copyrights of the Photos, which substantially consist of wholly original material that constitutes copyrightable subject matter under the laws of the United States. Automobilia II, or its predecessor in interest, has complied in all respects with the Copyright Act and all of the laws of the United States governing copyrights. The Photos have been timely registered with the United States Copyright Office.

25. Defendants Getty Images, Getty US, and Pixels have directly, vicariously and/or contributorily infringed, and unless enjoined, will continue to infringe Automobilia II's copyrights by reproducing, displaying, distributing, creating a derivative work thereto and utilizing the Photos for purposes of trade without authorization of or payment to Automobilia II in violation of 17 U.S.C. § 501 *et seq.* on the website Photos.com.

26. Defendants have willfully infringed, and unless enjoined, will continue to infringe Automobilia II's copyrights by knowingly reproducing, displaying, distributing, creating a derivative work thereto, and utilizing the Photos for purposes of trade.

27. On information and belief, Defendants' acts of infringement are willful because, inter alia, Defendants are sophisticated businesses with full knowledge of the strictures of federal copyright law and the basic requirements for licensing the use of copyrighted content for commercial exploitation. In addition, Automobilia II's licensee once had a relationship with Getty US and, as such, Defendants were fully aware of Automobilia II's copyrights and copyright registrations through that relationship.

28. Despite such knowledge, Defendants willfully reproduced, publicly distributed, and publicly displayed the Photos on Photos.com and unlawfully sold unauthorized derivative works of the Photos to customers for substantial profit.

29. Defendants have received substantial benefits in connection with the unauthorized reproduction, display, distribution, and utilization of the Photos for purposes of trade, including by increasing the traffic to their websites and increasing sales of its infringing derivative works.

30. The wrongful acts of Defendants have caused, and are causing, great injury to Plaintiff, of which damages cannot be accurately computed, and unless this Court restrains Defendants from further commission of said acts, Automobilia II will suffer irreparable injury, for all of which it is without an adequate remedy at law. Accordingly, Plaintiff seeks a declaration that Defendants are infringing Automobilia II's copyrights and an order under 17 U.S.C. § 502 enjoining Defendants from any further infringement of Plaintiff's copyrights.

31. As a result of the acts of Defendants alleged herein, Automobilia II has suffered and is suffering substantial damage to its business in the form of diversion of trade, loss of profits, injury to goodwill and reputation, and the dilution of the value of its rights, all of which are not yet fully ascertainable.

32. Plaintiff is entitled to a potential award of up to \$150,000 per infringed work on Photos.com.

33. Alternatively, at its discretion, Automobilia II is entitled to actual damages in an amount to be proven at trial for the infringement of all works at issue.

34. Plaintiff is also entitled to its attorney's fees, costs, and interest in prosecuting this action.

SECOND CLAIM FOR RELIEF

(Copyright Infringement, 17 U.S.C. § 501

Against All Defendants)

35. Plaintiff Automobilia II incorporates here by reference the allegations in paragraphs 1 through 34 above.

36. Automobilia II is the rightsholder to the copyrights of the Photos, which substantially consist of wholly original material that constitutes copyrightable subject

1 matter under the laws of the United States. Automobilia II, or its predecessor in interest,
2 has complied in all respects with the Copyright Act and all the laws of the United States
3 governing copyrights. The Photos have been timely registered with the United States
4 Copyright Office.

5 37. Defendants Getty Images, Getty US, and Pixels have directly, vicariously
6 and/or contributorily infringed, and unless enjoined, will continue to infringe Automobilia
7 II's copyrights by reproducing, displaying, distributing, creating a derivative work thereto
8 and utilizing the Photos for purposes of trade without authorization of or payment to
9 Automobilia II in violation of 17 U.S.C. § 501 *et seq.* on the website Pixels.com and
10 FineArtAmerica.com.

11 38. Defendants have willfully infringed, and unless enjoined, will continue to
12 infringe Automobilia II's copyrights by knowingly reproducing, displaying, distributing,
13 creating a derivative work thereto, and utilizing the Photos for purposes of trade.

14 39. On information and belief, Defendants' acts of infringement are willful
15 because, inter alia, Defendants are sophisticated businesses with full knowledge of the
16 strictures of federal copyright law and the basic requirements for licensing the use of
17 copyrighted content for commercial exploitation. In addition, Automobilia II's licensee
18 once had a relationship with Getty US and, as such, Defendants were fully aware of
19 Automobilia II's copyrights and copyright registrations through that relationship.

20 40. Despite such knowledge, Defendants willfully reproduced, publicly
21 distributed, and publicly displayed the Photos on Pixels.com and FineArtAmerica.com and
22 unlawfully sold unauthorized derivative works of the Photos to customers for substantial
23 profit.

24 41. Defendants have received substantial benefits in connection with the
25 unauthorized reproduction, display, distribution, and utilization of the Photos for purposes
26 of trade, including by increasing the traffic to their websites and increasing sales of its
27 infringing derivative works.

42. The wrongful acts of Defendants have caused, and are causing, great injury to Plaintiff, of which damages cannot be accurately computed, and unless this Court restrains Defendants from further commission of said acts, Automobilia II will suffer irreparable injury, for all of which it is without an adequate remedy at law. Accordingly, Plaintiff seeks a declaration that Defendants are infringing Automobilia II's copyrights and an order under 17 U.S.C. § 502 enjoining Defendants from any further infringement of Plaintiff's copyrights.

43. As a result of the acts of Defendants alleged herein, Automobilia II has suffered and is suffering substantial damage to its business in the form of diversion of trade, loss of profits, injury to goodwill and reputation, and the dilution of the value of its rights, all of which are not yet fully ascertainable.

44. Plaintiff is entitled to a potential award of up to \$150,000 per infringed work on Pixels.com and FineArtAmerica.com

45. Alternatively, at its discretion, Automobilia II is entitled to actual damages in an amount to be proven at trial for the infringement of all works at issue.

46. Plaintiff is also entitled to its attorney's fees, costs, and interest in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

1. That Defendants, their officers, agents, servants, employees, representatives, and attorneys, and all person in active concert or participation with them, be permanently enjoined from designing, copying, reproducing, displaying, promoting, advertising, distributing, or selling, or any other form of dealing or transaction in, any and all advertising and promotional materials, print media, signs, Internet websites, or any other media, either now known or hereafter devised, bearing any design or mark which infringe, contributorily infringe, or vicariously infringe upon Plaintiff Automobilia II's rights in the photographs at issue;

2. That Defendants be held liable to Plaintiff in statutory damages for copyright infringement, including willful infringement, in accordance with 17 U.S.C. §§ 504(a)(2) & (c) and for costs, interest and reasonable attorney's fees pursuant to 17 U.S.C. § 505;

3. That an accounting be made for all profits, income, receipts, or other benefit derived by Defendant from the reproduction, copying, display, promotion, distribution or sale of products and services, or other media, either now known or hereafter devised, that improperly or unlawfully infringes upon Plaintiff's copyrights pursuant to 17 U.S.C. §§ 504 (a)(1) & (b);

4. Requiring Defendants to account for and pay over to Plaintiff all profits derived by Defendants from their acts of copyright infringement and to reimburse Plaintiff for all damages suffered by Plaintiff by reasons of Defendants' acts, pursuant to 17 U.S.C. §§ 504 (a)(1) & (b);

5. For actual damages for copyright infringement pursuant to 17 U.S.C. §§ 504 (a)(1) & (b); and

6. That Plaintiff be awarded any such other and further relief as the Court may deem just and appropriate.

Dated: April 25, 2022

ONE LLP

By: /s/ Joanna Ardalan

Joanna Ardalan

Attorneys for Plaintiff,
Automobilia II, LLC

DEMAND FOR JURY TRIAL

Plaintiff Automobilia II hereby demand trial by jury of all issues so triable under the law.

Dated: April 25, 2022

ONE LLP

By: /s/ Joanna Ardalan

Joanna Ardalan

Attorneys for Plaintiff,
Automobilia II, LLC